



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,892	07/15/2003	Jessica Elizabeth LeMay	460.2221USQ	7326
<div>7590 05/16/2007 CHARLES N.J. RUGGIERO, ESQ. OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P. 10th FLOOR ONE LANDMARK SQUARE STAMFORD, CT 06901-2682</div>			<div>EXAMINER ANDERSON, CATHARINE L</div>	
			<div>ART UNIT 3761</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 05/16/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,892

Applicant(s)

LEMAY ET AL.

Examiner

C. Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 27 February 2007 have been fully considered but they are not persuasive.

In response to the applicant's argument that Linares fails to disclose a flared region, it is noted that the present claims and specification do not require the flared region to gradually increase in diameter. Since no clear definition of the term "flared" is given in the present specification, the term is considered under the broadest reasonable interpretation. Therefore, the portion of the applicator of Linares having a wider diameter than the adjacent portion is considered to be flared, since it extends outwardly from the narrower portion.

In response to the applicant's argument that Linares fails to disclose a tapered main section, it is noted that while the present specification may describe the claimed invention as having certain dimensions to the tapered main section and the insertion tip, this does not constitute a clear definition of the scope of the terms "tapered main section" and "insertion tip." Therefore, the main section of the applicator of Linares may be defined to include the tapered portion adjacent the tip, and therefore fulfills the claimed limitations.

In response to the applicant's argument that the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale, it is noted that MPEP 2125 goes on to state that the article pictured can be relied on for what they would reasonably teach one of ordinary skill in the art. The present claims

Art Unit: 3761

disclose a range of relative dimensions, not actual proportions (i.e. exact sizes), of the article. The drawings of Linares reasonably teach the relative dimensions of the applicator shown.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Linares et al. (6,264,626).

With respect to claims 1-4, 25, 34, and 41, Linares discloses a tampon applicator assembly 1, as shown in figure 1, comprising a barrel 10, a plunger 70, and a pledget. The barrel 10 comprises a first region 61, a second region 60, and a gripping region 62 therebetween. The first and flared regions 60 and 61 each have an outer dimension about 15-25% larger than the gripping region 62, as described in column 3, lines 56-68.

With respect to claims 5, 11-13, 23-24, 32, and 38-39, the barrel 10 is at its maximum dimension about 55% to 85% of the length from the insertion tip 41, as shown in figure 1.

With respect to claims 6, 8, 14-15, 17-18, 21-22, 29-30, 33, 40, and 42-43, the main section of the barrel has a taper at the insertion end of between 1.07 and 1.15, as

shown in figure 1.

With respect to claims 7, 9, 10, 16, 19, 20, 26-28, 31, and 35-37, the insertion tip 41 comprises a plurality of petals 40, the petals 40 having a length-to-width ratio of at least 2, as measured from figure 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMA

cla

May 11, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

